BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ROBERT C. KARRICK	)	
Claimant	)	
	)	
VS.	)	
	)	
WICHITA EAGLE & BEACON	)	
Respondent	)	Docket No. 265,024
	)	
AND	)	
	)	
TRAVELERS INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent requested review of the August 5, 2003 Award entered by Administrative Law Judge (ALJ) John D. Clark. The Appeals Board (Board) heard oral argument on February 17, 2004.

APPEARANCES

David H. Farris of Wichita, Kansas appeared for the claimant. Lyndon W. Vix of Wichita, Kansas appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ issued an Award finding that claimant sustained a compensable injury on January 8, 2000.[1] Although timely notice and written claim were contested, the ALJ concluded claimant satisfied the statutory requirement for both and was therefore entitled to benefits under the Kansas Workers Compensation Act. The ALJ went on to award claimant a 25 percent permanent partial impairment to the body as a whole for his upper extremity and neck injuries based upon the testimony of Dr. Philip R. Mills.

[1] Although the Award indicates January 5, 2000 as the date of claimant's accident, it appears from the parties' statements during oral argument to the Board and the balance of the evidence contained within the record, that January 8, 2000, is the date claimant actually sustained his accidental injury. It would appear that the recitation of January 5, 2000, is erroneous and the actual date of accident is January 8, 2000.

The respondent requests review of this decision alleging claimant failed to comply with the statutory mandates regarding notice and written claim. Highly summarized, respondent contends that it first received notice of claimant's injury on May 17, 2000, well after the January 8, 2000 accident, and that the accident report completed on that day does not, under Kansas law, constitute a written claim. Thus, respondent maintains the claimant is not entitled to benefits under the Act.

Claimant argues that the ALJ was correct in finding the requisite elements of notice and written claim have been satisfied. However, claimant takes issue with the nature and extent of impairment awarded by the ALJ. Claimant maintains that the greater weight of the medical testimony, specifically that of Drs. Pedro Murati and Michael H. Munhall, justifies a higher impairment rating than that offered by Dr. Mills and awarded by the ALJ.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The ALJ adequately and succinctly set forth the factual background and medical evidence in his Award and they will not be unnecessarily repeated. Only those facts which are pertinent to the issues at hand will be discussed.

Respondent argues that claimant has failed to establish two statutorily required elements. First, respondent maintains claimant failed to provide notice of his accident within the appropriate period of time set forth in K.S.A. 44-520. The statute provides as follows:

> Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer with 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary.[2]

Claimant testified that on January 8, 2000, he advised Charles Bennett, the man in charge during claimant's shift, of his injury and the need for an accident report form. Mr. Bennett confirms this fact. The two men proceeded to look for an accident report form, but were unsuccessful. They then turned to Alan Eenis, the union steward, who was also unable to provide the appropriate paperwork. Claimant was told to go ahead to the

[2] K.S.A. 44-520

emergency room for treatment. Within the week, Mr. Eenis contacted claimant and advised him that an blank accident report form would be left for him on the bulletin board at work. Claimant returned to work during the evening shift, filled out the form and left it with Mr. Bennett, who in turn deposited the paperwork in the supervisor's box. This was the same procedure Mr. Bennett had followed in other instances when he had been advised of a workplace injury. For some unexplained reason, that document is no longer in existence.

Respondent argues that Mr. Bennett had no authority to receive notice of an injury. This argument is unpersuasive. The statute contemplates notice to a person in charge and not notice to a co-worker.[3] It is uncontroverted that Charles Bennett was the "night man in charge." He had, in the past, received notification from other employees of their injuries. His testimony, along with that of Mr. Eenis, squarely supports that offered by claimant. The Board finds the statutorily required element of notice was met on January 8, 2000, for an accident that occurred on January 8, 2000.

Respondent also argues that claimant failed to provide written claim as required by K.S.A. 44-520a, which provides as follows:

> (a) No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation;. . .[4]

The Kansas Supreme Court has stated that "[t]he purpose of the requirement for written claim is to enable the employer to know about the injury in time to investigate it."[5] The same purpose or function has, of course, been ascribed to the requirement for notice found in K.S.A. 44-520.[6] Written claim is, however, one step beyond notice in that it requires an intent to ask the employer to pay compensation. In *Fitzwater* the Kansas Supreme Court described the test as follows:

> In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in

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[3] *Wietharn v. Safeway Stores, Inc.*, 16 Kan. App. 2d 188, 820 P. 2d 719 (1991).

[4] K.S.A. 44-520a (1993 FURSE)

[5] *Craig v. Electrolux Corporation*, 212 Kan. 75, 510 P. 2d 138 (1973).

[6] *Pike v. Gas Service Co.*, 223 Kan. 408, 573 P. 2d 1055 (1978).

> mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?[7]

Mr. Eenis provided claimant with an accident report form, which he completed with Mr. Bennett. The report contained a description of the accident and injury and was a written claim for compensation. Claimant thereafter arranged a meeting with the human resource manager, Giselle Roy, to determine why his claim for workers compensation benefits was being denied. He was in the process of receiving treatment and was concerned that benefits weren't being provided in spite of his earlier notice in January 2000. When advised that the accident report had not been received, claimant and Ms. Roy worked together to complete it. The form contains information relating not just to the accident but to claimant's medical history and his current need for treatment. As a result of this meeting, Ms. Roy set up a medical evaluation.

The statute does not require a particular form or that the written claim be in the employee's own handwriting. Rather, the focus is on the injured employee's intent in preparing the document. Under these facts and circumstances, claimant was clearly intending to have his employer pay compensation when he helped to fill out the internal accident report. He was not receiving the benefits he believed he was owed and in order to remedy this problem, he set up a meeting with the human resources manager who routinely deals with such issues. Claimant made his intent to make a claim for benefits clear. Accordingly, the Board finds claimant filed a timely written claim for the January 8, 2000 accident when he assisted in the completion of the accident report form on May 17, 2000.

Having concluded the claim was compensable, the ALJ indicated that he was most persuaded by the opinions of Dr. Mills and awarded claimant a 25 percent whole body impairment. The ALJ specifically found that claimant's neck complaints were attributable to his January 8, 2000 accident. During Dr. Mills' deposition, he was asked to rate claimant's neck impairment, even though it was his belief that claimant's neck problems were unrelated to his work. Dr. Mills complied with the request and opined that, independent of any causation but based upon the other physicians' ratings and conclusions, claimant bore a 10 percent whole body impairment based upon DRE Category III. When the 10 percent was properly combined with the upper extremity ratings, claimant would be assigned a 32 percent whole body impairment.[8] Although the ALJ intended to follow the impairment assessment offered by Dr. Mills, it appears he simply erred in assigning 25 percent impairment rather than the 32 percent impairment Dr. Mills expressed during his deposition.

The Board finds the ALJ's reliance on Dr. Mills' opinions is reasonable. Dr. Mills was not retained by either claimant or respondent and was asked to evaluate claimant

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[7] *Fitzwater v. Boeing Airplane Co.,* 181 Kan. 158, 309 P. 2d 681 (1957).

[8] Mills Depo. at 25-26.

based on a referral by Dr. Abay, a physician who was treating claimant. The Board finds his opinion is the most credible in this instance. Accordingly, the Award should be modified to reflect a 32 percent permanent impairment to the whole body.

The balance of the findings contained within the Award are hereby affirmed to the extent that they are not inconsistent with the findings herein.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge John D. Clark dated August 5, 2003, is affirmed in part and modified in part as follows:

The claimant is entitled to 43.71 weeks of temporary total disability compensation at the rate of $383 per week or $16,740.93 followed by 123.61 weeks of permanent partial disability compensation at the rate of $383 per week or $47,342.63 for a 32% work disability, making a total award of $64,083.56.

The other findings of the Administrative Law Judge are hereby adopted by the Appeals Board as if fully set forth herein to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this _____ day of March, 2004.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: David H. Farris, Attorney for Claimant
Lyndon W. Vix, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director